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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 MARK NUNEZ, et al.,

4 Plaintiffs,

5 v.

11 Civ. 5845 (LTS)

6 CITY OF NEW YORK, et al.,

7 Defendants.

Conference

8 -----x

9  
10 November 17, 2022  
11 2:30 p.m.

12 Before:

13 HON. LAURA TAYLOR SWAIN,

14 Chief District Judge

15 APPEARANCES

16 THE LEGAL AID SOCIETY  
17 Attorneys for Plaintiff Class

18 BY: MARY LYNNE WERLWAS  
19 KAYLA SIMPSON

-and-

20 EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL, LLP  
21 BY: DEBRA L. GREENBERGER

22 DAMIAN WILLIAMS  
23 United States Attorney for the  
24 Southern District of New York  
25 JEFFREY K. POWELL  
LARA K. ESHKENAZI  
Assistant United States Attorneys

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APPEARANCES (Continued)

New York City Law Department

BY: KIMBERLY JOYCE

SHERYL NEUFELD

Assistants Corporation Counsel

STEVE J. MARTIN

Court Monitor

ANNA E. FRIEDBERG

Deputy Court Monitor

Also Present:

Louis Molina, Commissioner DOC

Christina Vanderveer, Deputy Associate Monitor

Alycia Karlovich, Analyst

Dennis Gonzalez, Associate Director

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1 (Case called)

2 THE COURT: Again, good afternoon. We're here today  
3 for a status conference, and I would first ask that the  
4 participants in the conference introduce themselves,  
5 themselves, and state their appearances, beginning with the  
6 monitor and the monitoring team.

7 MR. MARTIN: Your Honor, my name is Steve Martin,  
8 federal court monitor.

9 THE COURT: Good afternoon, Mr. Martin.

10 I'm going to ask that each of you, when you do speak,  
11 do your best to speak up. You can tip the microphones up, and  
12 you can also take mask off when you speak.

13 MR. MARTIN: Thank you, your Honor.

14 Steve Martin, federal court monitor in the Nunez  
15 matter.

16 THE COURT: Good afternoon, Mr. Martin. You can be  
17 seated. As you introduce yourself, you can be seated.

18 MR. MARTIN: Thank you, your Honor.

19 MS. FRIEDBERG: Good afternoon, your Honor. My name  
20 is Anna Friedberg. I'm a deputy monitor.

21 THE COURT: Good afternoon, Ms. Friedberg.

22 MS. VANDERVEER: Christina Vanderveer, associate  
23 deputy monitor.

24 THE COURT: Good afternoon, Ms. Vanderveer.

25 MS. KARLOVICH: Good afternoon. I'm Alycia Karlovich,

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1 and I'm an analyst.

2 THE COURT: Good afternoon, Ms. Karlovich.

3 MR. GONZALEZ: Dennis Gonzalez, and I'm the associate  
4 director.

5 THE COURT: Good afternoon, Mr. Gonzalez.

6 MS. GREENBERGER: Good afternoon, your Honor. Debra  
7 Greenberger from Emery Celli Brinckerhoff Abady Ward & Maazel  
8 for the plaintiff class.

9 THE COURT: Good afternoon, Ms. Greenberger.

10 MS. WERLWAS: Good afternoon, your Honor. Mary Lynne  
11 Werlwas, the Legal Aid Society, Prisoners' Rights Project, for  
12 the plaintiff class.

13 THE COURT: Good afternoon, Ms. Werlwas.

14 MS. SIMPSON: Kayla Simpson, Legal Aid Society,  
15 Prisoners' Rights Project, for the plaintiff class. Good  
16 afternoon.

17 THE COURT: Good afternoon, Ms. Simpson.

18 MS. ESHKENAZI: Good afternoon. Lara Eshkenazi from  
19 the U.S. Attorney's Office on behalf the government.

20 THE COURT: Good afternoon, Ms. Eshkenazi.

21 MR. POWELL: Good afternoon. Jeffrey Powell from the  
22 U.S. Attorney's Office on behalf the government.

23 THE COURT: Good afternoon, Mr. Powell.

24 MS. JOYCE: Good afternoon, your Honor. Kimberly  
25 Joyce, from the New York City Law Department, for the city

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1 defendants.

2 THE COURT: Good morning, Ms. Joyce.

3 MR. POWELL: Good afternoon, your Honor. Also from  
4 the City Law Department, Sheryl Neufeld, for defendants.

5 THE COURT: Good afternoon, Ms. Neufeld.

6 MR. MOLINA: Good afternoon, your Honor. Louis  
7 Molina, commissioner, New York City Department of Correction.

8 THE COURT: Good afternoon, Commissioner Molina.

9 And greetings to all of those who are here as  
10 spectators today. Thank you all for coming to court.

11 As I said, we're here today for a status conference.  
12 This conference was scheduled to discuss the city and the  
13 Department of Correction's implementation of the action plan  
14 that was approved and entered by the Court on June 14 of this  
15 year, that's at docket entry No. 465, including a review of  
16 whether meaningful progress has been made in achieving the  
17 reforms specified in the action plan and for consideration of  
18 whether additional remedial relief is warranted at this  
19 juncture.

20 I also greet those who are observing from the overflow  
21 courtrooms.

22 I remind everyone that as provided in the Court's  
23 January 19, 2021, standing order, neither recording nor  
24 retransmission of any part of this proceeding is permitted.  
25 All attending who have been permitted to keep electronic

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1 devices on entering the courtroom must keep those devices on  
2 silent and must not use them without -- unless I have given you  
3 specific permission to do that. And once again, all recording,  
4 photography, and retransmission are strictly prohibited.

5 We're here today to discuss a matter of great  
6 importance to all in this community, ensuring that the city and  
7 the department are trying the most efficient and effective path  
8 to reform to effectuate the safety-related measures that the  
9 parties agreed to in the 2015 consent decree and in subsequent  
10 remedial orders. This case and those measures --

11 Those who have come in who are standing, we're not  
12 having standees who are not court personnel. So if you're not  
13 court personnel, please go to an overflow courtroom.

14 Are you court personnel?

15 A VOICE: Yes, your Honor.

16 THE COURT: All right. Thank you.

17 All right. Chambers/court personnel who are not from  
18 my chambers should be going to the overflow as well, and I'll  
19 leave it at that.

20 This case and those measures are focused on the  
21 reduction of violence at Rikers. Safe conditions for the  
22 people held at Rikers and the people who work there are the  
23 essential goal, and the need is more pressing than ever. The  
24 Court held a conference with the parties and the monitor last  
25 spring on May 24, 2022, to discuss the development of an action

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1 plan incorporating specific and concrete steps that the city  
2 and the department need to take to address the unsafe  
3 conditions at Rikers Island. And after meaningful discussion  
4 among all parties about the contours of the necessary reforms  
5 and timelines, the monitoring team and the city submitted a  
6 proposed action plan for the Court's review on June 10, 2022.

7 The Court entered and approved the action plan with  
8 minor modifications, recognizing that while further remedial  
9 relief may be necessary should defendants not fulfill their  
10 commitments and demonstrate their ability to make urgently  
11 needed changes, the plan represented a way to move forward with  
12 concrete measures immediately to address the ongoing crisis at  
13 Rikers Island.

14 It has now been approximately five months since the  
15 Court approved the action plan. Since that time, the Court has  
16 watched the reports of conditions at Rikers closely, has  
17 received and reviewed two status reports from the monitoring  
18 team, and has met with the monitoring team to keep abreast of  
19 developments.

20 Today's conference represents a critical juncture. It  
21 is a moment to closely examine whether the action plan remains  
22 a viable way forward or whether the Court should consider  
23 potential alternative forms of relief.

24 The monitoring team was appointed to assess compliance  
25 with the consent decree, which was an agreement entered into by

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1 the parties in 2015 setting forth the reforms the city and the  
2 department need to take to improve conditions at Rikers. Since  
3 that time, the monitoring team has set up detailed analytical  
4 and reporting methods and assembled a group of experts that  
5 have advised the team and the department as to steps that  
6 should be taken to address ongoing serious problems.

7 The monitoring team's most recent status report issued  
8 on October 28, 2022, provides an updated overview of the  
9 conditions at Rikers which remain deeply disturbing.  
10 Incarcerated individuals and staff members face an unacceptably  
11 high risk of harm. This year has seen the highest number of  
12 in-custody deaths since 2013, and the GRVC, or the George R.  
13 Vierno Center facility, in particular, has seen skyrocketing  
14 monthly rates of uses of force, stabbings, slashings, and  
15 fights.

16 The monitoring team has explained that these extremely  
17 grave conditions have a myriad of root causes, all of which are  
18 complex and which stem from a lack of foundational good  
19 practices. The monitoring team has explained in its most  
20 recent report that the complexity of the underlying issues at  
21 Rikers means that there is no quick fix or easy solution to  
22 these severe problems, and that they cannot be resolved at a  
23 rate that the gravity of the conditions demands. The reality  
24 that there is no one quick fix means that the need for prompt,  
25 effective, and targeted work on key foundational and day-to-day



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1 issues is all the more urgent.

2 The Court was encouraged to learn from the most recent  
3 monitoring reports that the monitoring team, based on its  
4 observations over the last five months, has some degree of  
5 confidence that the department is now, in the monitoring team's  
6 words, poised to begin to build the foundation on which future  
7 improvements will rest and that the commissioner has infused  
8 the department with a new leadership team that not only  
9 understands the issues at hand but also has a sense of the  
10 practical steps necessary to achieve reform.

11 At today's conference, the Court looks forward to  
12 learning more about the city and the department's  
13 implementation of the action plan, including the views of the  
14 monitor and the parties as to whether sufficient meaningful  
15 progress has been made or whether further remedial relief is  
16 necessary.

17 Now we'll turn to the monitoring team and the parties  
18 for their views on the lessons learned from the past few  
19 months, what next steps can be taken, and the quickest and most  
20 effective way forward to ensure better protection of those at  
21 Rikers. I'll begin by calling on the monitor and deputy  
22 monitor.

23 MR. MARTIN: Thank you, your Honor.

24 THE COURT: Would you pull the microphone over so that  
25 it's directly in front of and tipped up, please, Mr. Martin.

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1 Thank you.

2 MR. MARTIN: Yes, I will. Receiving all right?

3 THE COURT: I think so.

4 Can those who are in the audience hear? OK. I'm  
5 seeing thumbs up. Please go on. Thank you.

6 MR. MARTIN: Your Honor, counsel, commissioner: As  
7 you noted, my office filed a second status report on the DOC's  
8 action plan on October the 28th. I trust it was received by  
9 the Court and the parties as a comprehensive, neutral, and  
10 detailed report that has materially informed us all so the  
11 course may be charted toward -- forward to advance the aims of  
12 the Court's orders and thus make safe and secure the operation  
13 of the DOC.

14 THE COURT: Mr. Martin, I think that I'm going to have  
15 to ask you to go to the podium.

16 MR. MARTIN: Podium?

17 THE COURT: Because I'm seeing some cupping of ears in  
18 the back.

19 MR. MARTIN: I will be glad to do so, your Honor.

20 THE COURT: Thank you.

21 MR. MARTIN: Do you want me to start anew? My opening  
22 statement is not that long. I'd be more than happy.

23 THE COURT: I think you might as well start from the  
24 beginning. Tip the microphone up just a bit more and pretend  
25 you're at the opera so that I have to hear you without the

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1 microphone.

2 MR. MARTIN: I'm kind of a test case here.

3 THE COURT: Yes, you are. You can do testing one,  
4 two, three. But it's very important that everybody hear  
5 everyone who's going to speak today. So thank you for bearing  
6 with the movement around the courtroom.

7 MR. MARTIN: As your Honor noted, my office filed the  
8 second status report on the DOC's action plan on October the  
9 28th. I trust it was received by the Court and the parties as  
10 a comprehensive, neutral, and detailed report that has  
11 materially informed us all so that a course may be charted  
12 forward to advance the aims of the Court's orders and thus make  
13 safe and secure the operation of the DOC.

14 Because the deputy court monitor, Ms. Friedberg, took  
15 the lead on developing today's agenda and, I might add, did a  
16 very admirable job in doing so, and she has had innumerable  
17 conferences, meetings to set a functional agenda for us to work  
18 through, I would ask the Court's leave to allow Ms. Friedberg  
19 to somewhat detail the agenda.

20 THE COURT: Yes, sir. Thank you.

21 Just one moment. We're trying to make the audio  
22 optimal here.

23 THE LAW CLERK: Sorry, Judge.

24 THE COURT: Thank you. May we proceed now?

25 So, Ms. Friedberg, you might as well go to the podium.

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1 Thank you.

2 MS. FRIEDBERG: I am Anna Friedberg, the deputy  
3 monitor in this case. Good afternoon, your Honor, and the  
4 parties.

5 We worked extensively with the parties over the last  
6 few weeks in multiple meetings, numerous phone calls, and  
7 countless emails have been shared. We have worked through and  
8 discussed a number of items, including operational issues and  
9 steps the department is taking to address those issues, along  
10 with the recommendations in the monitor's October 28 report.

11 We have also discussed report scheduling and  
12 information sharing, along with addressing the monitoring  
13 team's long-standing recommendation to allow the department to  
14 select the most qualified individuals to serve in the position  
15 of warden, be it a uniform staff member or a civilian. And  
16 finally, we have discussed plaintiff's motion for contempt and  
17 potential appointment for a receiver.

18 We appreciate the efforts of all parties to marshal  
19 through these issues. We believe the agenda for today's  
20 conference will allow the parties and the Court to address  
21 these important issues and chart a path forward.

22 With that, we turn the conference to the Court and the  
23 parties to proceed through the various agenda items. It will  
24 allow the city and the commissioner to provide an update on the  
25 current state of affairs, as well as to address the potential

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1 stipulation regarding facilities supervisors, the plaintiff  
2 class to speak about their position along with their proposed  
3 motion for contempt and appointment of receiver, and also allow  
4 the United States to provide an opportunity on their positions  
5 as well.

6 Thank you.

7 THE COURT: Thank you.

8 Next on the agreed agenda is counsel for the city and  
9 the commissioner.

10 MS. JOYCE: Kimberly Joyce, for the city. Good  
11 afternoon, your Honor.

12 THE COURT: Good afternoon.

13 MS. JOYCE: I'm here with my cocounsel, Sheryl  
14 Neufeld, and New York City of Department of Correction  
15 Commissioner Louis Molina. I will keep my remarks brief before  
16 I turn to Commissioner Molina.

17 As a member of the Rikers Interagency Task Force, I am  
18 proud of the work we've done collaboratively as a city to  
19 support the department and the Nunez action plan. While there  
20 is still much hard work to be done, the department's efforts  
21 over the past five months demonstrate the commitment to and  
22 momentum for change that has been lacking for so many years.  
23 The city and the task force will continue to support  
24 Commissioner Molina as he makes the hard choices necessary to  
25 make the city's jails safer for all.

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1           Before I turn to Commissioner Molina, I did want to  
2 address Legal Aid's request to make a motion for a receiver.  
3 It's the defendants' position, as we set forth in our  
4 November 14 letter, that the Court should not permit Legal Aid  
5 to file its intended motion at this time because, given the  
6 exacting standard under which such motions are reviewed, Legal  
7 Aid's motion will not have a likelihood of success.

8           Our review of the cases cited by Legal Aid in their  
9 November 14 letter to the Court and the handful of other cases  
10 in which receivers were imposed demonstrates that receivers are  
11 imposed as a last resort, when there are no alternative  
12 remedies, when institutions are unwilling to take required  
13 action or have engaged in repeated bad faith. In one case  
14 cited by plaintiffs, it took 22 years of inaction, failure, and  
15 repeated contempt of judicial orders for a receiver to be  
16 granted. Here, in stark contrast, before the Court is a city  
17 and a department committed to making the necessary reforms, as  
18 has been demonstrated since the beginning of the Adams'  
19 administration and particularly since the ordering of the  
20 action plan.

21           A receiver is not a magic bullet or a quick fix,  
22 especially when the department is already moving forward with  
23 the work necessary to achieve lasting reform of the city's  
24 jails. At the outset, just like the city, a receiver must work  
25 within the confines that exist: the consent judgment, the

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1 remedial orders, and existing local, state, and federal laws  
2 and regulations that are in place. If the receiver can't work  
3 within those confines, if those laws or regulations prevent  
4 them from carrying out their duties and responsibilities set  
5 forth by the Court, only then can the receiver petition the  
6 Court for additional powers necessary to achieve compliance  
7 with the Court's orders. Notably, this is similar to what the  
8 city is doing now by seeking authority from the Court to hire  
9 facility leadership from outside the current uniform ranks.

10 Appointment of a receiver will set things back rather  
11 than move things forward, especially when there is already the  
12 leadership in place, the interagency collaboration, and the  
13 focus of resources that have never been seen before that is  
14 able to turn the tide now.

15 Thank you, your Honor. And I'm going to turn now to  
16 Commissioner Molina, and I'm happy to answer whatever questions  
17 the Court may have.

18 THE COURT: Thank you. I'll hold my questions for  
19 now.

20 Commissioner Molina.

21 MR. MOLINA: Good afternoon, your Honor.

22 THE COURT: Good afternoon.

23 MR. MOLINA: Thank you for the opportunity to address  
24 the Court again and to share with the Court the progress the  
25 department has made under the action plan developed jointly

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1 with the monitor.

2 The monitor has previously stated that for the  
3 department to move forward with sustainable reforms, its  
4 leadership must address four foundational issues: (1) Deeply  
5 flawed security practices that are inconsistent with best  
6 correctional practices, (2) inadequate supervision of rank and  
7 file staff and facility leadership, (3) staffing practices and  
8 procedures that fail to effectively deploy staff across the  
9 agency, and (4) a timely and meaningful discipline process with  
10 the goals of both accountability and improved work performance.

11 Since being appointed by Mayor Adams the Department of  
12 Correction leadership team has been focused on addressing these  
13 four foundational issues. The action plan approved by this  
14 Court in June memorialized the pathway forward for building the  
15 department's ability to reform itself.

16 I understand the public and the parties to this  
17 consent judgment are frustrated with what went on for the last  
18 six years, from 2015 to 2021. However, this administration is  
19 committed to resolving the long-standing systemic issues that  
20 have plagued the department.

21 The challenges before us are complex and require  
22 correctional and business management expertise and experience.  
23 Antiquated thinking and transitioning of this city's  
24 responsibility to third parties, such as a receiver, will not  
25 solve these issues. Your Honor, my team and I will. The



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1 complexity of the challenges before us require that numerous  
2 nuanced issues be solved individually so that collectively the  
3 solutions will allow for reform that is sustainable.

4 A few examples for this Court: The first is the lack  
5 of middle management leadership at our facility in the rank of  
6 deputy warden. For too long this critical rank was scheduled  
7 to work only Monday through Friday from 7 a.m. to 3 p.m., not  
8 accounting for the fact that this is a 24-hour operation that  
9 requires leadership on all tours. The department will now  
10 schedule deputy warden ranks so that there is seven-day-a-week  
11 coverage, 24 hours a day. This sounds simple, but the prior  
12 leadership was unwilling to take this step. We identified the  
13 issue and are taking action.

14 A second example involves the collection of data. The  
15 department collects a great deal of data but, quite frankly,  
16 has not been very good at conducting data analysis. We  
17 developed an Office of Management Analysis and Planning team,  
18 also known as OMAP, to address long-standing operational  
19 inefficiencies and misguided management strategies. OMAP  
20 focuses on data analytics, operations research, strategic  
21 planning, project management, and program evaluation. The  
22 department has attracted and hired experts in strategic process  
23 design, management, and program evaluation to ensure that we  
24 are an evidence-based correction agency.

25 Good analytics are critical to good government. Other

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1 city agencies have similar operations, research, and data  
2 analytics teams, but it was not until this administration that  
3 the creation of this business unit became a reality for the  
4 Department of Correction.

5 A third and final example is the city's interagency  
6 task force created by Mayor Adams' executive order. Never have  
7 multiple levers of government been utilized and leveraged to  
8 address infrastructure improvement, streamline hiring and  
9 disciplinary processes, to support staff through organizational  
10 health, and more generally to cut through the red tape.

11 Interagency cooperation is essential if we are to move the  
12 department forward with these critical reforms. This should  
13 have always been an all-in city proposition, and it was not  
14 until this administration came into place that this level of  
15 support was provided.

16 We have shown our commitment by our actions over this  
17 administration's first 11 months in office. The mayor  
18 appointed me to take on this very important work. I have done  
19 it before, successfully leading another jail out of federal  
20 oversight, and I can do it here.

21 The team that I have assembled collectively has  
22 hundreds of years of experience from around the country  
23 combined in correction, general law enforcement, and business  
24 management, which are required to solve these complex issues.  
25 This team needs to be given the time required to turn this

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1 department around. We have the expertise to do it.

2 Your Honor, the tough decisions that I've had to make  
3 and will have to make in the future do not come easy. It is  
4 unfortunate that after so long that the reasons we are at this  
5 point is because of the intentional disinvestment in this  
6 department's staff, infrastructure, and people in custody from  
7 2015 to 2021. Today we are asking for the option to select  
8 highly qualified candidates from outside of the department to  
9 lead our facilities. I do not take for granted the  
10 contributions of our current wardens and acting wardens.  
11 Without them we would not have accomplished so much in the last  
12 11 months, from turning around our young adult facility, which  
13 at the start of the year was the department's most violent, and  
14 bringing it to a level of calm that it has not experienced for  
15 some years, to increasing court production from 60 percent in  
16 January of this year to over 90 percent citywide today, to  
17 implementing measures and engaging with their respective staff  
18 to get officers to return to work, reducing the percentage of  
19 staff out sick from 26.1 percent in January to 12.2 percent  
20 today. But we still have a great more that needs to be done.

21 Your Honor, asking for the flexibility to hire outside  
22 candidates does not lessen my appreciation for the current  
23 wardens and acting wardens who have stepped up to the  
24 challenge. I believe that with this infusion of talent, one  
25 day in the future the department will once again have wardens

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1 and chiefs from within the rank and file. Through mentorship  
2 and investment the department will bring back these honorable  
3 uniform ranks.

4 What is, of course, most troubling to me is the  
5 deaths. In the past 11 months, as the Court knows, there have  
6 been 18 deaths. The monitor is correct in noting that jails  
7 and prisons around the country are experiencing increased  
8 deaths, but that gives me no comfort. We must keep fentanyl  
9 out of our facilities and take measures to address suicides.  
10 The monitor has highlighted these issues, and with his  
11 assistance, we will tackle them. You have our commitment.  
12 This -- in fact, we are hiring a consultant to enhance our  
13 self-harm prevention. This, coupled with the monitor's expert  
14 and their recommendations, we will move the dial in the right  
15 direction.

16 It is a shame, your Honor, that the department was  
17 allowed to reach this state at the end of 2021. You have my  
18 abiding commitment to improving the quality of our jails. Much  
19 needs to be done, but we will do it.

20 Thank you, your Honor, for letting me address the  
21 Court. I'm available to answer your questions.

22 THE COURT: Thank you, Commissioner Molina.

23 I do have a question, a specific question which is  
24 legal in nature, regarding the proposed stipulation that was  
25 filed last night. It invokes a power that is granted to the

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1 courts under Section 3626(a)(1)(B) of Title 18, which is part  
2 of the -- pardon me, part of the Prison Litigation Reform Act.  
3 That section requires that for prospective relief that would  
4 permit a government official to exceed his or her authority  
5 under state or local law or otherwise violate state or local  
6 law, the court has to be able to find that federal law -- and  
7 here the relevant federal law would be the Constitution --  
8 requires that the relief be ordered in violation of state or  
9 local law.

10 So the question is twofold: Do the city and the  
11 department agree, at least for purposes of this specific relief  
12 in terms of hiring, that there is currently a safety situation  
13 that is violative of the Constitution and that this relief is  
14 required as a foundational measure and narrowly tailored to  
15 address that violation?

16 MS. JOYCE: Yes, your Honor, the city is prepared to  
17 make those admissions and satisfy the PLRA.

18 THE COURT: Thank you.

19 I will hear from counsel for the plaintiff class now,  
20 Ms. Werlwas.

21 MS. WERLWAS: Good afternoon, your Honor. Under the  
22 action plan, a thousand more class members have been subjected  
23 to force at the hands of uniformed staff of this agency. Since  
24 the action plan was entered, 12 more have died, many in  
25 circumstances directly attributable to the failures on the

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1 record here. Among those was 28-year-old Erick Tavira, whose  
2 family is here today in the front row in the gallery.

3 THE COURT: My sympathies. And thank you for being  
4 here today.

5 MS. WERLWAS: Mr. Tavira died in defendants' custody  
6 on October 22, 2022, of presumed suicide. His family describes  
7 him as big-hearted, affectionate and brave and a light to the  
8 family who loved to play music. They buried him last weekend.

9 Seven years prior to that weekend, this city promised  
10 to take concrete, specific actions to end its unconstitutional  
11 pattern of violence by staff against people in city custody and  
12 to reduce violence in the jails and ensure the safety of people  
13 held there, and they did not do so. And as a result, the  
14 violence that prevails today, even after this action plan, as  
15 well as the four preceding court orders is at such an  
16 astonishing rate, particularly of unnecessary, excessive, and  
17 avoidable force, that it was unthinkable at the time of the  
18 consent judgment that matters would be this bad. Today the  
19 jails are more violent, more deadly, and more lawless than at  
20 the time this consent judgment was entered. And the record  
21 indisputably shows that the city does not have control of its  
22 own jails.

23 This record is replete with facts that in any  
24 functioning system would independently be a five-alarm fire,  
25 yet have become to be treated as the status quo here, whether

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1 that is areas of the jail left unsupervised; staff working  
2 double and even triple shifts, while deputy wardens are just  
3 now being put in the facility on weekends and evenings; people  
4 locked and forgotten in intake cells despite a very clear  
5 directive that they be held there only 24 hours; a militarized  
6 emergency services unit that the leaders seem unable to  
7 control.

8           The process for picking -- for fixing these and many  
9 other failures described throughout the monitor's report and a  
10 record that we would bring to this Court show that this process  
11 has failed. Four different commissioners of correction, four  
12 different remedial orders, ink spilled on countless plans,  
13 talented leaders hired and fired, progress made and undone, and  
14 the undeniable facts of the last seven years through this most  
15 recent report show that continuing down the same path cannot  
16 and will not bring relief to the plaintiff class.

17           The patent insufficiency of the current process to  
18 work is illustrated by the topic of discussion here today, that  
19 is, how to redress the absence of competent uniformed  
20 leadership in the facilities themselves. The order that the  
21 city is now willing to seek to allow them to fill some of their  
22 eight warden positions with external hires has taken 18 months  
23 of intensive negotiation, reporting, and court action just to  
24 get to this point. That cannot be scaled up. The waste of the  
25 parties' and Court's resources in entertaining what were

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1 patently wrong solutions, such as that in the action plan,  
2 which even the monitor at the time of the action plan and the  
3 plaintiffs agreed would not work to solve the problem facility  
4 leadership, it cannot continue.

5 And even more revealing of the lack of confidence in  
6 this approach is what the city is not doing today. They are  
7 not seeking the same relief, the stipulation that is before  
8 your Honor, to allow external hiring of deputy wardens, who are  
9 a unionized position unlike wardens, or other leadership. The  
10 monitor made the recommendation that they do so, that they  
11 allow external hiring of the deputy wardens in the initial  
12 recommendation 18 months ago, and the record clearly supports  
13 the need to do so. But they have not done it; instead  
14 counseling that we watch and wait.

15 This is at the same time that the October 28 report  
16 tells us that the city has not complied with the Court's orders  
17 to increase the presence of assistant deputy wardens in the  
18 jails to supervise the line captains. The Court ordered it to  
19 increase; it has decreased. What we have raised here today and  
20 in our letter is just a high-level summary of an increasingly  
21 dire factual record that we seek to present to the Court that  
22 will powerfully and undeniably show contempt of this Court's  
23 orders.

24 The complacency that has become baked into this  
25 process whereby the city's persistent failure to meet its



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1 court-ordered obligations is treated as a regrettable fact with  
2 promises of better days ahead, better plans, better programs  
3 cannot persist. The record that we seek to present to your  
4 Honor will show why, in addition, the remedy that's needed at  
5 this point in this matter is the appointment of a receiver to  
6 take the actions that the city is unwilling or unable to take  
7 over the last seven years.

8 The persistence of dysfunction is across  
9 administrations, it is across commissioners, and it demands a  
10 structural solution that is not hostage to the political winds  
11 or the desires of constituencies but rather is accountable to  
12 the Court. Receivership is an equitable remedy that the Court  
13 can, upon consideration of a full record that we will present,  
14 adduce to tailor to the specific needs of this case and of this  
15 matter.

16 We note that the characterization of receivership in  
17 the city's presentation of resetting the clock or undoing plans  
18 that are underway fundamentally misunderstands the equitable  
19 nature of this remedy. It does not have to disturb the aspects  
20 of the entity that are functioning and that are working, and we  
21 would not want it to do so. We need the plaintiff class to  
22 maintain the benefits of any progress that has been made.  
23 Rather, the Court would define a receiver's authority, whether  
24 it's parallel or superseding existing governance structures of  
25 the agency as appropriate to the circumstances and as the

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1 record shows would be necessary.

2 This is an opportunity, actually, for the city, the  
3 parties, the monitor to collaborate with a receiver, with the  
4 benefit of a receiver's power and authority as defined by the  
5 Court, to solve these problems before the city -- the  
6 receivership terminates.

7 This can be done in many different ways. In  
8 California you can see the receiver in the *Plata* case and the  
9 secretary issue memos to staff jointly. And in fact, a  
10 receiver can provide not disruption, but actually much-needed  
11 stability to this process, given that commissioners in this  
12 city typically have relatively short tenure, there have been  
13 four of them in the course of this matter alone, and each  
14 inevitably asserts a need to restart the clock afresh.

15 The record that we seek to present to the Court and  
16 the briefing that -- where we would engage the law that  
17 certainly governs the appointment of a receivership will set  
18 forth the path towards how we believe the Court should exercise  
19 its discretion to implement this remedy at a -- we'll note that  
20 there is nothing in the PLRA, for example, that requires us to  
21 wait 14 more years before seeking a remedy that will work in  
22 this case.

23 Receivership is an extraordinary remedy, but these are  
24 extraordinary facts, and the record that we seek to put before  
25 the Court will show that on this record, which involves one of

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1 the profound failures of governance in this city's recent  
2 history and a human rights crisis in which the state continues  
3 to abuse its people behind closed doors despite seven years of  
4 court orders, demands the relief of appointment of a receiver.

5 Thank you.

6 THE COURT: I just have one brief question for you  
7 before I go on to hear from the representatives of the United  
8 States Attorney's Office.

9 You indicate that a receiver -- and you point to the  
10 examples of L.A. in particular. I think you may also have  
11 mentioned Chicago -- would be able to come in and turn things  
12 around. Isn't there a learning curve for a receiver? Doesn't  
13 a -- a receiver can't do anything alone, especially in a system  
14 this big.

15 So wouldn't a receiver have to remake and reestablish  
16 relationships and face the same sorts of on-the-ground problems  
17 that the current leadership is seeking to address through the  
18 action plan? Which is a sort of long way of saying, to the  
19 extent there is an opportunity to build on momentum and things  
20 that are being accomplished now, how is it in the interests of  
21 the people who are confined day to day, the people who work  
22 there day to day, to go through a lengthy and particularized  
23 litigation process and then a re-invention and learning process  
24 for a receiver yet to be identified if what we're trying to do  
25 is be in a better place tomorrow?

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1 MS. WERLWAS: Your Honor, several points in response.  
2 The first is that we fully expect, and I think there was no  
3 dispute, that whatever actions the city is taking right now to  
4 make the jails safer, they are going to continue,  
5 notwithstanding motion practice that the lawyers will be here  
6 in court, if necessary, undertaking; that the many efforts that  
7 are underway to fix the jails right now would continue because  
8 that is the right way to run an institution, and we absolutely  
9 expect those to go forward notwithstanding what additional  
10 relief the Court is considering.

11 I think that this view of a receiver as some --  
12 upsetting an applecart or essentially restarting a clock is one  
13 that I think is not rooted in what the receivership authority  
14 actually means. We go back to its roots, which were, in fact,  
15 to preserve an entity that was the subject of a legal dispute  
16 until that could be resolved, and that is what we expect would  
17 happen here. It's not that a receiver comes in and undoes the  
18 good work that is being done. What the receiver would do, and  
19 would have to answer to the Court for doing, would take actions  
20 that this city has demonstrated it lacks either the will or  
21 ability to do, to take actions such as fix this profound  
22 problem of facility supervision that we've identified today  
23 without more years of delay and 18 months at a time to take  
24 additional steps. We expect the city to collaborate with a  
25 receiver and a receiver's staff to bring them up to speed on

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1 the measures they are undertaking.

2 The receiver could also vastly accelerate many of the,  
3 frankly, ridiculously long processes that are set forth in the  
4 action plan and in the record to date that -- and bring all  
5 resources to bear in solving this crisis using New York City's  
6 extraordinary economic power to procure necessary equipment  
7 faster than some of the -- what we submit are patently  
8 unreasonable timelines the city has pursued.

9 THE COURT: Can you just give me examples? Are you  
10 talking about the time it has taken to achieve particular  
11 things, or are you talking about particular projects or  
12 processes? I'm just trying to get a more concrete idea.

13 MS. WERLWAS: Both, your Honor. As to the latter,  
14 which is what we should say projections or times, examples  
15 would be that the action plan, even on its own terms, describes  
16 a software program and procuring a software program -- that is  
17 good, and a large entity needs to manage its staff -- that  
18 won't be operative under these terms until July of 2023. We  
19 have seen the procurement of cell doors that actually lock has  
20 been unreasonably prolonged. The difficulties the city faced  
21 in getting the emergency services unit to wear body cameras, a  
22 deeply critical intervention, was delayed from the inability to  
23 quickly procure vests on which those cameras could be mounted.  
24 This is --

25 THE COURT: This is in past years, correct?

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1 MS. WERLWAS: Yes. Yes, that's what I wish to be  
2 clear, that is in the past years. The hiring of the -- the  
3 hiring processes that have taken place under -- even under the  
4 action plan, have us here months later with people just getting  
5 started, just being hired. There's nothing about a  
6 receivership that means that excellent people who have been  
7 hired are not going to continue to provide their expertise to  
8 the agency. It does not undermine that process.

9 It also further, though, allows what seems to be for  
10 the first time in this case an entity to be managing the jails  
11 that is also committed to and willing to take important steps  
12 to discipline staff and supervisors that fail to perform the  
13 duties the public has entrusted with them. For too long there  
14 has not been the discipline that is necessary for staff or  
15 supervisors to achieve the results in this case.

16 THE COURT: Some of the reporting by the monitor over  
17 the past year in representations by the city have indicated  
18 that in this calendar year disciplinary backlogs have moved.  
19 Now, the commissioner and counsel for the city talk about prior  
20 administrations, and clearly there have been starts, stops, and  
21 backward regression over the past seven years -- well, I'll say  
22 six given that there has been some progress shown in this year.  
23 There have been different authority figures and authority  
24 structures.

25 So will you tell me what a new receiver would do, in

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1 plaintiff's view, or could be empowered to do consistent with  
2 the requirements of the PLRA and the high standards of exercise  
3 of equitable authority that is not entrained in this calendar  
4 year under this administration?

5 MS. WERLWAS: I think that the answer to that and some  
6 of where points to what we would expect a receiver to do that  
7 the city does not do is in looking at those facts reported for  
8 this calendar year about disciplinary matters. And there  
9 remain -- the facts are, as reported in October, that there  
10 remain a thousand pending cases in which the department has  
11 found violations of their use-of-force policies that are still  
12 waiting adjudication.

13 The city in its papers has indeed pointed to the  
14 numbers of disciplinary matters that have been resolved in this  
15 calendar year. A closer examination of that, some of which is  
16 in the monitor's report where it's describing the discipline  
17 that was meted out in the monitoring period, which is not  
18 entirely coextensive with this year shows that, I believe, and  
19 counsel can correct me if I'm wrong, that the overwhelming  
20 majority of these were for incidents that happened over a year  
21 ago. Is it 90 -- about 80 percent. I'm not going to -- I  
22 don't want to misstate a number, but the monitor's nodding. He  
23 knows which section of the report I'm referring to.

24 The point being that, yes, there were more  
25 disciplinary adjudications and were overwhelmingly not directed

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1 at the misconduct that is happening on these leaders' watch  
2 right now. It is far easier to impose a discipline for  
3 something that your staff were not responsible for avoiding.

4 In any event, the -- in addition, what the monitor  
5 also reports is an astonishing number of disciplinary matters  
6 that are referred to the facilities for adjudication that the  
7 new -- the investigations of use-of-force incidents are  
8 revealing that approximately half of the use-of-force incidents  
9 that were in the -- over the last few years have resulted in a  
10 referral to the facility to impose discipline. And what's  
11 happening there? What's happening is what you would expect  
12 when a disciplinary matter is put in the hands of the same  
13 facilities that are not working, that don't have wardens or  
14 deputy wardens that are functioning. The disciplinary cases  
15 are essentially being abandoned in many -- that the monitor  
16 reported one-third of the cases that were referred to the  
17 facilities to impose command discipline were dismissed. Some,  
18 a small proportion, of what the monitor deemed were reasons  
19 that might be plausible and about 70 percent that can't be  
20 explained.

21 This black hole of discipline is a result of building  
22 on bad processes, of taking discipline and putting it in the  
23 hands of facilities that everyone here acknowledges do not have  
24 the leadership or the ability to do the job.

25 Finally, we do note that on the issue of actions taken



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1 this year, the city's letter addressed the number of times the  
2 current administration has utilized the disciplinary tool of  
3 suspensions. A suspension being in this agency a 30-day  
4 suspension before the person is returned to work. And  
5 notwithstanding the large number of suspensions, as the report  
6 shows us, there's been a remarkable decline in the use of  
7 suspensions of staff for use of force under the action plan.  
8 That's in the appendix. There were only six such suspensions  
9 in the most recent three months that are reported despite  
10 extraordinary use-of-force rates. And then due to the civil  
11 service laws, these people are back on the job within 30 days.

12 There's no question that discipline, both of line  
13 staff, of unionized staff, and of wardens and supervisors is  
14 intimately wrapped up in politics and is inhibited by the  
15 city's constituencies and its political -- perceived political  
16 needs. Having an entity that is structurally, not personally  
17 but structurally, independent of these vagaries and these  
18 realities and is responsible for crafting relief based on what  
19 this case needs are what a receivership offers and what we  
20 expect a receiver would do.

21 THE COURT: Thank you, Ms. Werlwas. Thank you. I  
22 wanted to make sure you completed your remarks. So I will now  
23 call on Mr. Powell.

24 MR. POWELL: Thank you, your Honor.

25 Like everyone in this courtroom today, the government

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1 continues to have grave concerns about the ongoing unsafe and  
2 dangerous conditions in the jails, including the  
3 extraordinarily high levels of violence, the use of excessive  
4 and unnecessary force against inmates, the high volume of  
5 assaults by inmates against staff, the disturbing spike in  
6 in-custody deaths that we've talked about today, the ongoing  
7 failure to follow basic security protocols, and the deficient  
8 staff deployment practices that too often leave posts unmanned  
9 and disrupt and lead to a breakdown in the delivery of basic  
10 service to inmates.

11 It is abundantly clear, and I don't think the monitor  
12 would dispute this, that the city and the department continue  
13 to be in noncompliance with core requirements of the consent  
14 judgment and the prior remedial orders that your Honor has  
15 entered. And as a result of this noncompliance, it's also  
16 abundantly clear that incarcerated individuals and department  
17 staff continue to face an imminent risk of harm every day.

18 While the current state of affairs is alarming, based  
19 on our review of the monitor's report and our extensive  
20 discussions with the monitoring team over the last weeks and  
21 months, there appears to be at least some glimmer of hope that  
22 progress may be on the horizon due to the new leadership team  
23 that has been put in place by the commissioner, which  
24 Mr. Martin describes as a sea change that bodes well for the  
25 development of solutions.

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1           Several of these new department leaders have  
2 substantial experience in managing corrections systems outside  
3 of New York City and achieving real reforms. The government  
4 has consistently taken the position that the department is in  
5 desperate need and has been in desperate need for years of an  
6 infusion of outside corrections experts who are committed to  
7 addressing the culture of violence and dysfunction that have  
8 plagued this system for decades. The newly installed  
9 leadership may, just may, be a first step to achieve this.

10           While the government supports the department's plan to  
11 hire individuals outside of uniform ranks into the union, into  
12 the warden positions, it is frustrating, we share Legal Aid's  
13 frustration that it took this long to move forward with a  
14 recommendation that the monitor made 18 months ago and has been  
15 the subject of multiple discussions in this court before your  
16 Honor.

17           The flaws with the commissioner's initial plan to hire  
18 civilian assistant commissioners to run the jails alongside of  
19 the existing wardens was flawed from the beginning, and those  
20 flaws were repeatedly identified by Mr. Martin several months  
21 ago when we were in court. It is unfortunate that the city  
22 took this long to act on the recommendation and seek this  
23 judicial relief earlier.

24           Although the monitor speaks highly of the department's  
25 new leadership personnel, it remains to be seen whether their

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1 appointments will translate into real change and better  
2 outcomes. In light of the monitor's request to delay his next  
3 report until March 31, 2023, which I know we haven't talked  
4 about today, but we can when your Honor wishes, we have  
5 asked -- if that occurs, we have asked the city and the city  
6 has agreed to provide us with interim information, additional  
7 information, by early February so that we, the government, the  
8 United States, can assess whether true progress is actually  
9 occurring.

10 Specifically, we've asked and the city has agreed to  
11 provide us with updated data that are specifically referenced  
12 in the action plan on a wide range of metrics concerning, among  
13 other things, the level of violence in the jails, staff  
14 absenteeism, the deployment of staff and facility supervisors,  
15 the level of inmate supervision, and the extent to which  
16 officers are being held accountable and supervisors are being  
17 held accountable for their misconduct. We need this data to  
18 continue to carefully monitor this situation and quantitatively  
19 evaluate whether progress is actually being made. Indeed,  
20 those metrics were included in the action plan at the  
21 government's suggestion at the last conference.

22 In addition, the city has agreed to provide us by  
23 early February with a description of the specific steps that  
24 the city and department will take over the next several weeks  
25 to address many of the very specific concerns that the monitor

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1 identified in this report. The monitor's November 14  
2 submission covers many of these areas that will be the subject  
3 of that report, but to just name a few, it will include:

4 How are they addressing the deficiencies in the  
5 supervision of uniform staff, which continues to be a problem?

6 How are they reducing the frequency of security  
7 lapses, which often result in the failure to secure doors,  
8 officers leaving their posts, and failure to timely intervene  
9 to de-escalate incidents?

10 How are they addressing the high -- extraordinarily  
11 high violence levels at GRVC?

12 How are they addressing the increasing in-custody  
13 deaths, and specifically, what are they doing to implement the  
14 valuable recommendations that the monitor made in his report to  
15 reduce the likelihood of self-harm and the astonishing number  
16 of self-harm incidents in custody?

17 There are many other areas that we've asked for  
18 updated information on and the city will be providing to us.  
19 Although the government, as we indicated in our -- as the  
20 monitor indicated in his submission to the Court on November 14  
21 conveying our position, although the government is not  
22 intending at this time to join the plaintiff class' motion  
23 seeking the appointment of a receiver, if that motion is made,  
24 the government reserves its right to join the motion at a later  
25 date or to submit a separate motion seeking other relief based

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1 on the reporting, the data, and other information that the  
2 government receives over the coming weeks.

3 The government will continue to have regular meetings  
4 and discussions with the monitoring team, as we have over the  
5 last several months and years, to obtain real time updates on  
6 the department's progress in actually implementing the plans  
7 and initiatives that are discussed in the monitor's report. We  
8 are particularly interested in the monitoring team's firsthand  
9 observations when they go and visit the facilities and the  
10 jails and what they are seeing with respect to the actual  
11 practices and operations of the jails. All of this information  
12 from the monitor, the reporting and the data, will be crucial  
13 to the government's decision as to whether to join plaintiff  
14 class' motion, if they're allowed to make this motion, in the  
15 future.

16 Finally, we would respectfully request if the Court  
17 grants the monitor's request for an extension in the next  
18 report to March 31, we would respectfully request that the  
19 Court schedule another status conference earlier than that, in  
20 February after we've received our reporting, to discuss the  
21 status of the department's efforts to implement the action plan  
22 and update on that, as well as what steps are being made to  
23 recruit and hire the most qualified candidates into these  
24 warden positions.

25 I'd be happy to answer any questions that the Court

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1 has. Thank you.

2 THE COURT: Thank you.

3 So that we have all of the proposals described and  
4 fleshed out on the table, I haven't had a complete description  
5 of the proposed stipulation on hiring and also the monitor  
6 hasn't spoken about the reporting cycle change. So who is  
7 prepared to present on the content of the proposed stipulation?

8 Ms. Joyce?

9 MS. JOYCE: Yes, your Honor. Just bear with me, your  
10 Honor, I apologize. I'm just turning to the stipulation.  
11 Thank you.

12 So, your Honor, yes, as the monitoring team submitted  
13 the proposed stipulation and order last night, the city, with  
14 input from the parties, crafted a stipulation and order that we  
15 believe meets the standards of the PLRA, and we are seeking to  
16 give this commissioner the authority to hire what we would term  
17 "facility supervisors," formerly wardens, from outside of the  
18 current uniformed leadership, which would thereby require the  
19 waiving of certain state and local laws which we set forth in  
20 the stipulation and order. I believe Mr. Martin is also  
21 prepared to submit a declaration in support of the stipulation  
22 and order, and the city is prepared also to craft a declaration  
23 about its efforts prior to coming to the Court with this  
24 proposal.

25 THE COURT: In aid of demonstrating that it is

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1 necessary and narrowly tailored and that other measures tried  
2 have not worked?

3 MS. JOYCE: Precisely, your Honor. The monitoring  
4 team indicated in their letter that the city would submit a  
5 declaration by November 23. I did not raise this with the  
6 monitoring team, but I neglected Thanksgiving week and the  
7 holidays, and I would ask if the Court would grant us the  
8 ability to submit that declaration by November 30. So it would  
9 be the city's declaration and Mr. Martin's declaration that  
10 would be submitted in support of this proposed stipulation and  
11 order.

12 THE COURT: Well, the 23rd is before Thanksgiving. So  
13 are you saying that you don't believe that between now and next  
14 Wednesday you would be able to compile and proffer the  
15 information that is necessary?

16 MS. JOYCE: Correct, only because it involves a few  
17 stakeholders and steps that were taken with respect to outreach  
18 to the state as well as -- there's a gathering of information  
19 from various stakeholders that will be needed to create the  
20 declaration. So allowing us to have until that following week  
21 would just give us sufficient time to put all the evidence  
22 before your Honor.

23 THE COURT: Thank you. I'll take that request under  
24 advisement pending scheduling at the end of this conference.

25 Now, the reporting proposal.



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1 MS. FRIEDBERG: Your Honor, if you'd like --

2 THE COURT: If you speak up, you can speak from --

3 MS. FRIEDBERG: Sure. Can you hear me here?

4 THE COURT: -- the table. Yes, I can.

5 MS. FRIEDBERG: Sorry.

6 THE COURT: I'll let you speak seated because that  
7 brings you closer to the microphone.

8 MS. FRIEDBERG: OK. Thank you.

9 THE COURT: That's Ms. Friedberg speaking.

10 MS. FRIEDBERG: With respect to the reporting  
11 proposal, the monitoring team, in our October 28 report as well  
12 as our November 14 report, outlined our submission. I will not  
13 repeat it here today, but rely upon the fact that our position  
14 remains the same with respect to the scheduling of our next two  
15 reports to be on March 31, 2023, and the second to be on  
16 June 9, 2023. We respectfully propose that those dates are  
17 changed for the reasons that we've outlined and that the status  
18 reports are -- the status conferences are scheduled following  
19 those reports so that the parties and the Court are best  
20 positioned to have the information that's necessary for that.

21 If you should have any other questions, I'm happy to  
22 address them. I believe that the plaintiffs provided a  
23 response on November 14 with respect to their position on the  
24 reporting schedule, which is that they oppose it. I will not  
25 speak for them. The government and the city have consented to

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1 the monitoring team's request. I understand that the  
2 government in the conference today has raised a request that  
3 was not previously raised with any of us, which is a request  
4 for a status conference in February prior to the submission of  
5 the monitor's report. We would contend that that would be  
6 premature and that a conference would be best situated after  
7 our report is provided to the Court. However, we would  
8 ultimately be available at the Court's convenience at any time  
9 to provide any information that you believe is necessary in  
10 light of the various competing views here today on this  
11 scheduling.

12 THE COURT: Thank you.

13 Ms. Werlwas, I had another question I neglected to ask  
14 you, which is with respect to the timing of this report and  
15 your proposed motion practice and steps in advance of that.  
16 Section XXI, that is XXI, of the consent judgment prescribes  
17 certain procedures that the parties agreed in 2015 would be  
18 undertaken before requests for Court involvement that are not  
19 consensual. Will you tell me what, if anything, has been done  
20 in compliance with that provision?

21 MS. WERLWAS: If you don't mind, if Ms. Greenberger --

22 THE COURT: Certainly.

23 MS. GREENBERGER: Ms. Greenberger, your Honor.

24 As the Court is aware, we've been asking to be able to  
25 file our motion for contempt and receivership since the spring.

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1 It was your Honor's order in, I believe it was, June that we  
2 file it after this conference. Since that time we've had  
3 repeated conversations communicating with the city about our  
4 need to seek contempt and seek receivership; and, obviously,  
5 the parties are not going to reach agreement on that, although  
6 we continue to believe it's actually in the city's interest to  
7 have a receiver to avoid the political issues that continue to  
8 befall this department.

9 THE COURT: So it is your representation that you have  
10 complied with the requirements of XXI?

11 MS. GREENBERGER: It is, your Honor, and my  
12 understanding is the city has never said otherwise.

13 Thank you.

14 THE COURT: Thank you.

15 So would the city like to respond to the request by  
16 the plaintiffs and proposal, respond further to the proposal  
17 regarding receivership?

18 MS. JOYCE: Your Honor, if I may, there were some  
19 statements made by plaintiffs' counsel that either myself or  
20 Commissioner Molina would like to respond to. Could we do  
21 that, as well as potentially further respond to the  
22 receivership application?

23 THE COURT: Yes.

24 MR. MOLINA: Thank you, your Honor.

25 I just wanted to just respectfully remind the Court

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1 that in 2016, when I was the chief internal monitor, I had  
2 written a report where I had recommended doing what we are  
3 doing today. In fact, at that time that the rank of the  
4 three-star chiefs and above did not have the capacity to lead  
5 this department out of the situation we were in back in 2016.  
6 And if I remember correctly, I think my statement read that if  
7 we did not make this change at that time, that at minimum we  
8 would continue to see high rates of use-of-force incidents or  
9 exponentially higher incidents of force if this change isn't  
10 made at that time. So when -- if someone knew that we were  
11 going to be in this situation, it was I in 2016 as the chief  
12 internal monitor.

13 I would also just like to tell the Court that since  
14 our action plan was conducted, we have hired six high-level  
15 executives with hundreds of years of correction management  
16 experience, two associate commissioners, three deputy  
17 commissioners to fill out the major bureaus of security,  
18 administration and facility operations, and also a senior  
19 deputy commissioner with significant decades of experience  
20 managing a large jail system. To be able to do the recruitment  
21 vetting that's necessary in an accelerated timeline to be able  
22 to do that from when the action plan was put in place in June  
23 till now is a huge feat.

24 When it comes to timely and meaningful discipline  
25 process, I'd just like to remind the Court that when I took

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1 over on January 1, we had 3,500 to 3,700 disciplinary cases  
2 that had not been addressed going all the way back to 2017.  
3 Since I've been the commissioner, I have adjudicated over 2,200  
4 disciplinary cases calendar year to date. That is more  
5 disciplinary cases done by any commissioner, I believe, of any  
6 city agency in New York City's entire history.

7 In addition to that -- and I'm not proud to having to  
8 have done this -- I have taken action and have had to terminate  
9 or forcibly separate over 180 uniform staff members. I don't  
10 take that lightly, but it was what was needed to be done in  
11 order to address just a long time of no accountability being  
12 done by former management.

13 In addition to that, I have in my time been very  
14 action-oriented. When we have staff that is on probation and  
15 they fail to meet the standards or they repeat deficiencies of  
16 the reason of their probation, I have terminated those  
17 individuals. I have removed wardens in business unit capacity  
18 that didn't have the skill set or the willingness to do what  
19 needed to be done. I have demoted individuals in the rank of  
20 assistant deputy warden and on occasion have removed deputy  
21 wardens that were not meeting our standards.

22 So I'd just like to say in the year to date time  
23 frame, I have been very action-oriented. I've committed to  
24 this Court that I would use all of the powers that I have  
25 within the office of commissioner, and that power has been

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1 strengthened by the commitment and support that I have by Mayor  
2 Adams and the interagency task force in order to address these  
3 systemic failures with systemic solutions so that we can have  
4 sustainable reform finally in this department.

5 Thank you, your Honor.

6 THE COURT: Thank you.

7 MS. JOYCE: Your Honor, I will just very briefly  
8 respond to Legal Aid's request to make a motion for receiver  
9 and to their briefing schedule.

10 First, to the briefing schedule, if the Court does  
11 grant Legal Aid's request to make a motion, I would  
12 respectfully request that the Court endorse the briefing  
13 schedule proposed by the city which gives more time to respond  
14 than, I believe, less than 30 days that was given by Legal Aid  
15 for the city to respond to the motion.

16 But with respect to whether or not the Court should  
17 even grant Legal Aid the ability to make such a motion, one  
18 example that Ms. Werlwas gave as to why a receiver was needed  
19 was procurement. Procurement is a topic that is on every  
20 weekly Rikers interagency task force agenda. Procurement is  
21 not an issue that is impacting reform or progress by the  
22 department. For example, on cell doors, cell doors we have the  
23 funding from the Office of Management and Budget. We have the  
24 staffing to help support the project with the department from  
25 the Department of Design and Construction. It is not a city

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1 issue. It is totally wholly a supply chain issue, your Honor.  
2 There are a certain amount of people that produce doors and a  
3 certain amount of people that produce locking mechanisms. And  
4 we have, through the Rikers interagency task force, eliminated  
5 all barriers to what we can do, and that's purely a supply  
6 chain issue. There's nothing that procurement-wise or vetting  
7 or appointment-wise that a receiver could come in and do that  
8 the city is not already doing and taking the actions itself.

9 There has not been an action identified by anybody  
10 that -- a concrete action that a receiver could come in and do  
11 that the city is not already willing to do and this  
12 commissioner has already demonstrated that he's willing to do  
13 itself. It would just be a delay, and time is really of the  
14 essence. And we have momentum now for change.

15 THE COURT: Thank you.

16 Does the monitoring team wish to be heard further,  
17 either about the interpretations of the reports or its  
18 assessment, as to whether progress can be accelerated at this  
19 point through consideration of the plaintiffs' proposed motion  
20 as opposed to where we are now?

21 MR. MARTIN: Your Honor, may it please the Court --

22 THE COURT: Mr. Martin, since you're soft-spoken, why  
23 don't you speak from your seat as well, closer to the  
24 microphone. Thank you.

25 MR. MARTIN: May it please the Court, your Honor, when

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1 we collected the data when we drafted the October 28 report, we  
2 made every effort to include all relevant data materials,  
3 recommendations in that report, as of the 28th. So up to the  
4 28th, I would not add any comments because I am confident the  
5 report, through very, very selective editing, careful review,  
6 attempted to include that that the parties needed to assess the  
7 actions.

8 I will add one comment. Between October the 8th and  
9 today, I continue to see similar evidence of what we included  
10 in the report that gives me some confidence that gains are  
11 continuing to happen. Whether the quality of that statement is  
12 what it should be because of the duration of time between  
13 October the 28th and June 17, I will leave to the Court and to  
14 the parties, but I would like to cite just two examples of that  
15 progress between October 28 and June 17 -- between October 28  
16 and November 17.

17 One is the serious levels of violence that has been  
18 occurring at GRVC, slashings and stabbings. That there has  
19 been a very concentrated effort by the commissioner and a  
20 number of his deputy commissioners, deputy commissioner for  
21 classification, deputy commissioner for administration, and the  
22 most recent data coming from those efforts is favorable. It is  
23 clearly achieving some success in reducing the numbers of  
24 slashings and stabbings at GRVC. Again, a caveat there is it's  
25 a matter of weeks, but it does reflect a steady gain in that



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1 effort.

2 The other example I would give, because it simply  
3 occurred in my review between October 28 and November 17, I  
4 review all preliminary investigations. We divide those between  
5 three teams. What I received last week was from GRVC and RNDC.  
6 I have been having continual meetings with the deputy  
7 commissioner of security about directing attention to certain  
8 elements of basic security. Those primarily --

9 THE COURT: Would you mind speaking into the  
10 microphone.

11 MR. MARTIN: Oh, I'm sorry.

12 THE COURT: They can hear you without seeing you  
13 speak.

14 MR. MARTIN: Primarily those out of the second  
15 remedial decree. I understand the commissioner made reference  
16 to -- used the word "nuanced." He was quite correct. This is  
17 a nuanced business. This example I'm about to present, I think  
18 represents that nuance. We had been telling the deputy  
19 commissioner since June, when he kind of came on board and got  
20 on track, you need to keep inmates -- excuse me, detainees,  
21 that's my background, detainees.

22 THE COURT: Detained persons.

23 MR. MARTIN: Thank you.

24 -- out of vestibules. You need to secure "A" post  
25 doors and not let "B" post officers in the "A" post. This is

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1 minutia, it's nuanced, but it is hugely critical because it  
2 relates directly to violence. The most recent set of these  
3 reviews I've done, we now see through the influence, I believe,  
4 of the deputy commissioner for security of putting pressure on  
5 his reviewers, I want you to identify every instance where  
6 there is a detainee in a vestibule that shouldn't be there,  
7 where an "A" post officer has let a "B" post officer in. And  
8 they are disciplining not only the "B" post officer for going  
9 off duty -- going off post, thank you, but disciplining the "A"  
10 post officer for allowing the "B" post officer to come in.  
11 That is unprecedented in my experience with this agency.

12 So I just -- I believe it's important for the Court to  
13 know that progress, once it gets underway, can get momentum.  
14 I'm not going to represent that I'm seeing the momentum that  
15 it's going to take to bring the agency into compliance, but I  
16 do believe I'm seeing the beginnings of it. And I would  
17 warrant that the information that we have presented and have  
18 collected, and so forth, reflects that. That's my view, it's  
19 the view of my monitoring team, my analysts, my SMEs, that we  
20 heretofore have not seen. Whether the commissioner can  
21 continue that, I leave -- I mean, that's -- I can't answer  
22 that. I don't know. So I hope that was helpful.

23 THE COURT: Thank you.

24 Ms. Greenberger, did you wish to be heard?

25 MS. GREENBERGER: I did. Thank you, your Honor. I

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1 did want to respond to just a couple of things that the city  
2 said about the receivership motion.

3 I agree with Ms. Joyce that time is of the essence. I  
4 think we can all agree with that. The situations in the jails  
5 are worse than they have ever been in the entire time of the  
6 consent judgment. Our plaintiff class is being harmed every  
7 day. There is no time to wait to see if the commissioner and  
8 the city's newest hopes and plans will come to change the  
9 system because the problem here is a systemic failure. And  
10 what I don't want is for us to all be in the same place a year  
11 from now looking back at today and saying why didn't we move at  
12 that point?

13 And how do we know that it's a systemic failure?  
14 There's many pieces of evidence, but I just want to point to  
15 one that we just got highlighted from the commissioner.

16 In 2016 -- he just told your Honor in 2016 he knew  
17 that wardens needed to be replaced, but then when he came into  
18 office, it took 11 months, 11 months, for him to come to your  
19 Honor and ask for the Court to approve this change. And he  
20 only did so, the city only did so, after the plaintiff class  
21 said that they were going to move -- that we were going to move  
22 for a receivership motion. And even now the relief that  
23 they're asking for, not including ADWs, has no correctional  
24 basis; in other words, there's no correctional reason not to  
25 include ADWs. It's a political reason.

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1           So the question is how do we get around these  
2 political issues? And the answer, we would submit, is a  
3 receiver. What I was very concerned that Ms. Joyce said is  
4 that your Honor should prevent us from filing a motion. What  
5 she's really asking for is for your Honor to prematurely judge  
6 an incredibly complicated set of facts without having those  
7 facts fully laid out before the Court, and we think that would  
8 be grossly improper.

9           In addition to the information from the monitor's  
10 reports which the Court has seen, we will also be presenting  
11 information from class members, from the city's own data, and  
12 preliminary reviews from other sources. And so the question  
13 that will ultimately be before your Honor will be based on a  
14 significant and substantial record, only some of which is in  
15 front of your Honor today.

16           So all that we really ask, your Honor, today is that  
17 we set a briefing schedule; that it be in short order so that  
18 we can try to get some relief for our plaintiff class.

19           Thank you.

20           THE COURT: Thank you.

21           Did I see a hand at the back table? I thought I did,  
22 but perhaps I did not.

23           MS. JOYCE: Your Honor, I'll just really briefly  
24 respond. There keeps being statements about political, that  
25 there's some sort of political issue in our way that's keeping

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1 the department or the city from acting. That could not be  
2 further from the truth. Perhaps that was true in the prior  
3 administration and the prior commissioners. That is not true  
4 with this administration, with this commissioner, or else we  
5 would not even be coming to your Honor with a stipulation to  
6 allow us to hire externally, which is not a popular move with  
7 the current rank and file because it could possibly eliminate a  
8 position for them to move to.

9 So we are not -- the time to be beholden to politics  
10 is long gone. That is not what this commissioner and this  
11 administration is about. So any alluding to politics being an  
12 issue to keep us from making any acts couldn't be further from  
13 the truth.

14 THE COURT: Before you sit down, why is it that you  
15 aren't seeking authority to hire assistant deputy wardens from  
16 outside?

17 MS. JOYCE: Yes, your Honor, I will start. I can, of  
18 course, turn to the commissioner because it is his department.

19 From the discussions that I've had with the  
20 commissioner, it's my understanding that with the infusion --  
21 and there are a lot of them here -- but with the infusion of  
22 the external expertise -- he's hired 28 leaders from the  
23 outside in the past five months, which the swiftness has never  
24 been seen before in the likes of the city, I can tell you that,  
25 so 28 leaders -- with the infusion of external expertise, they

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1 have hundreds of years of correctional and law enforcement  
2 expertise, you've already heard from the monitor that he is  
3 seeing in the preliminary reviews that the deputy chief of  
4 security is ensuring that people who are taking -- who are  
5 allowing security lapses, such as the vestibules, that they are  
6 being disciplined. So the infusion is already making its way  
7 down.

8 When you have these external wardens, facility  
9 leaders, who will report -- who will be able to discipline and  
10 to tell the staff in the facilities when they're doing things  
11 wrong, that is huge, and it has not been done before. So when  
12 you have the external plus the professional development and the  
13 training that they're going to do to strengthen those core --  
14 the corrections officers, captains, ADWs, DWs, all of that  
15 together shows that at this time we don't need to expand our  
16 ask, and really that it's sufficient to bring in facility  
17 leaders from the outside.

18 I'm not sure if Commissioner Molina has things that he  
19 wants to add.

20 MR. MOLINA: Yes. I'll just add that, your Honor, the  
21 monitor has mentioned numerous occasions that change has to  
22 come from within. The reality is the facility leader plays a  
23 critical role in accountability and ensuring that the standards  
24 of our expectations are met. We have a little over 100  
25 individuals that hold the rank of assistant deputy warden to

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1 deputy warden. The reality is a receiver, even if that person  
2 so choose to want to move to outside candidates for those  
3 positions, there would not be 100 people to find. We do have  
4 talent within the assistant deputy warden and deputy warden  
5 position. That talent has to be nurtured. It has to be  
6 mentored. There has to be human capital investment in that  
7 rank. And having the flexibility to bring in outside  
8 candidates that can serve in the facility leadership role of  
9 warden coupled with the leadership team and cabinet that we  
10 have put together from across the country to lead us out of  
11 this situation is exactly the mix that is needed to move us  
12 forward.

13 Thank you.

14 THE COURT: Thank you.

15 Is there anyone else who needs to be heard? Very well  
16 then. Give me just a moment to reflect.

17 MS. WERLWAS: Excuse me, your Honor.

18 THE COURT: Ms. Werlwas.

19 MS. WERLWAS: Yes, if I may, on one additional measure  
20 that we did not speak to with regards to the adjournment of a  
21 reporting schedule --

22 THE COURT: Yes.

23 MS. WERLWAS: -- which we have not address, too, and  
24 our position -- oh, excuse me -- and our position with respect  
25 to that. It's put out in our papers, and we --

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1 THE COURT: And I have read your letter.

2 MS. WERLWAS: Yes. We wanted to -- what seemed to  
3 have been, though, was not -- did not seem to be present in the  
4 discussions today was that the proposed information stream in  
5 lieu of -- that would go to the Southern District in lieu of  
6 the monitor's public report, the city insists should be  
7 private, should be confidential, and that is a matter that  
8 since we frankly do not understand why updates such as  
9 Mr. Powell described on the matters already set forth in the  
10 action plan, the very matters we are discussing here today,  
11 could possibly be matters that should be kept confidential or  
12 secret from the parties, from the Court, we very strongly need  
13 on the -- pardon me.

14 THE COURT: I'm sorry. You say secret from the  
15 parties. Is it your understanding --

16 MS. WERLWAS: I misspoke.

17 THE COURT: -- that you would not have access to this  
18 same information?

19 MS. WERLWAS: I misspoke. My apologies. I did  
20 misspeak. From the Court and the public.

21 THE COURT: Am I correct in understanding that the  
22 system since 2015 has been that certain preliminary figures and  
23 reports would go to the parties before the filing of the --  
24 would go to the parties only before the filing of the monitor's  
25 report with the Court giving the Court and the public access to



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1 the report, is that correct?

2 MS. WERLWAS: Yes, that is correct, your Honor, that  
3 prior to -- under the previous, what we would say is the  
4 default reporting structure, that was the structure.

5 THE COURT: So in your remarks, please tell me why  
6 this is compellingly different from that structure that the  
7 parties have followed for the past few years.

8 MS. WERLWAS: Because the action plan at the  
9 defendants' and monitor's request fundamentally changed the  
10 reporting structure going forward, and it did so for the  
11 reasons that were set forth therein, and it did this: It  
12 suspended the monitor's duty to report on most aspects of the  
13 consent judgment and remedial orders on which it had been  
14 reporting for the prior six years so that it could address  
15 different issues.

16 Also in doing so, while cabining the monitor's review  
17 to a much smaller range of topics specifically delineated in  
18 the plan, it at the -- required quarterly reports, essentially,  
19 smaller, more frequent reporting rather than longer time  
20 periods with a broader scope. And further, because the urgent  
21 need, the urgent need that existed at the time the action plan  
22 was put into place and that is even more dire today,  
23 necessitates a more frequent provision of reliable, accurate  
24 information to the parties.

25 The proposed -- so the analogue that in forgoing a

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1 monitor's report in January, close in time, you know, to the  
2 developments that the city says are underway and on which many  
3 of their promises are based, until much later in March, on  
4 these facts, with this much harm, we cannot countenance that  
5 delay. The compromise simply was an even narrower production  
6 of information on which we can assess and the Court can assess  
7 whether some of the promises that are being made today, just  
8 some of them, are bearing fruit. And we submit there is  
9 nothing in that information that there is any reason should be  
10 kept secret from the Court and from the people.

11 THE COURT: Thank you.

12 Does anyone wish to respond? Ms. Joyce?

13 MS. JOYCE: Yes, your Honor. Just very briefly, and I  
14 won't restate what Ms. Friedberg so eloquently wrote in her  
15 letter, but I would refer the Court to the monitor's  
16 November 14 letter.

17 THE COURT: I think, given that we're having half a  
18 conversation here, somebody, whether it's Ms. Friedberg or you,  
19 needs to state before these good people who have been very  
20 patient in listening to what is a somewhat technical but  
21 nonetheless very important and highly charged conversation,  
22 should have context and hear what the other justification is  
23 that has been argued to the Court. So you might want to defer  
24 to Ms. Friedberg or you can state it.

25 MS. JOYCE: I was going to read it. So rather than me

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1 state it myself, I was going to refer the Court to  
2 Ms. Friedberg's letter of November 14, page 6, footnote 3,  
3 which lays out why it's not necessary and actually not good  
4 practice for the information to be public. The city has told  
5 the parties that they will -- that the information that they  
6 are requesting from us, we will give to them like we do in our  
7 compliance reports. There is just absolutely no reason why the  
8 public would need that information at that time. So  
9 specifically:

10 "This one-time report will be produced pursuant to the  
11 terms of the confidentiality agreements outlined in docket  
12 entries 290 and 340. This approach ensures the monitor can  
13 reasonably fulfill his obligations under the consent judgment,  
14 as it allows the monitoring team the opportunity to analyze  
15 data produced by the department to provide appropriate context  
16 in order to avoid the misinterpretation or the dissemination of  
17 incomplete or confusing information. While the parties will  
18 benefit from obtaining certain specific information in this  
19 one-time confidential report, the public filing of just a  
20 subset of information and without relevant context and other  
21 information will result in the dissemination of incomplete or  
22 confusing information to the public and to the Court."

23 And that is not helpful for anyone, your Honor.

24 THE COURT: And there is a final sentence, and  
25 Ms. Friedberg can correct me, but I understand that final

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1 sentence of that footnote to indicate that the data in order to  
2 assess progress requires measurement on a number of different  
3 points which may or may not be completely represented in the  
4 more limited report, and so the monitor is looking for an  
5 opportunity to report based on the multiple metrics and not  
6 just the narrower cut of data.

7 Is that correct, Ms. Friedberg?

8 MS. FRIEDBERG: That's --

9 THE COURT: Please feel free to correct me because I  
10 want correct information on this record.

11 MS. FRIEDBERG: Sorry, your Honor. You're partially  
12 correct. The other component is, as we've often discussed in  
13 our report --

14 THE COURT: Speak up louder, please.

15 MS. FRIEDBERG: Sorry. Can you hear me now?

16 THE COURT: Yes.

17 MS. FRIEDBERG: Thank you. Sorry.

18 As we've discussed, your Honor, you're accurate in  
19 what you stated. I would just add an addendum to that in which  
20 what we were describing is the assessment of compliance is not  
21 simply based on certain quantitative measures, but, in fact,  
22 requires a qualitative assessment. That's why the monitoring  
23 team has a set of subject matter expertise who are best  
24 positioned to contextualize and provide context for what that  
25 information needs. And so that's part of that. The sentence

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1 that you were just describing is that it's not just simply  
2 about the fact that certain data may be presented, but it may  
3 mean what does that data mean?

4 Along with information that it cannot be quantified,  
5 there is certainly a vast variety of numbers that are out  
6 there, but as you've probably seen in our reports, there's  
7 equally a large number of information that's shared from a  
8 qualitative basis that's based on our extensive experience both  
9 within monitoring the department and our experience in  
10 correctional settings overall.

11 THE COURT: Thank you.

12 Mr. Powell, was that a stand up or was that just  
13 moving?

14 MR. POWELL: It wasn't a stand up, your Honor.

15 THE COURT: OK. Thank you.

16 MS. FRIEDBERG: Your Honor, can I just provide one  
17 other piece of clarification?

18 THE COURT: Yes.

19 MS. FRIEDBERG: Because I think there might have been  
20 some, whether intentional or not, misimpression about the  
21 monitoring team's reporting request.

22 The monitoring team is still providing more  
23 information, even under this revised schedule, than would have  
24 been provided under the consent judgment. So to the extent  
25 that there's any suggestion that the monitoring team's

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1 providing less reporting, that is, in fact, inaccurate. The  
2 monitoring team has continued to provide the Court and the  
3 parties frequent information through informal phone calls,  
4 email communications. And with respect to public reporting,  
5 the monitoring team has now vastly exceeded what was required  
6 under the consent judgment, and this revised reporting schedule  
7 would continue that same approach.

8 THE COURT: Thank you.

9 All right. Now, just ask you all to sit quietly with  
10 me for just a couple of minutes here.

11 (Brief recess)

12 THE COURT: Thank you all for your patience.

13 The Court has carefully and thoughtfully considered  
14 the status reports diligently prepared by the monitoring team  
15 and the information that the parties and the monitoring team  
16 have presented today, as well as the parties' positions with  
17 respect to the proposal to move ahead at this time with an  
18 application for contempt and/or the appointment of a receiver  
19 and the parties' positions with respect to the change in the  
20 reporting schedule and access to the interim special report of  
21 data. The Court's rulings are as follows, and I share some of  
22 my rationale for those rulings:

23 First, as to the request to commence motion practice  
24 for contempt and/or the appointment of a receiver, under the  
25 Prison Litigation Reform Act, the relevant provision being

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1 found at Title 18 of the United States Code,  
2 Section 3626(a)(1)(A), the Court is not authorized to grant any  
3 prospective relief unless the Court finds that such relief is  
4 narrowly drawn, extends no further than necessary to correct  
5 the violation of the federal right at issue, and is the least  
6 intrusive means necessary to correct the violation of the  
7 federal right.

8 In its June 14, 2022, order setting this conference,  
9 the Court denied plaintiff's request for the setting of a  
10 briefing schedule for receivership motion practice at that time  
11 but directed the parties to meet and confer in advance of this  
12 conference to discuss proposed next steps, including any  
13 proposed briefing schedules.

14 Plaintiffs now argue that the issue of receivership  
15 must be taken up now because the city has failed to make the  
16 jails safer in the seven years since the initial consent decree  
17 was put in place, and plaintiffs have proposed a schedule for  
18 motion practice commencing on December 15 of 2022. The city  
19 both opposes the commencement of motion practice and proposes  
20 that if motion practice is to be permitted, a somewhat  
21 lengthier timetable should be allowed for briefing. And the  
22 United States Attorney's Office reserves its rights but is not  
23 at this point proposing to join in a motion to be made now.

24 For the following reasons, the Court concludes that  
25 the plaintiff class counsel has failed to make a

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1 sufficiently -- I'm going to use the word "plausible" not in  
2 the pejorative sense but in terms of pointing to specific facts  
3 that persuade the Court at this preliminary stage that  
4 appointment of a receiver could comport with the requirements  
5 of Section 3626(a)(1) of the PLRA at this time and therefore  
6 denies counsel's request to set a briefing schedule for a  
7 motion for contempt or appointment of a receiver.

8 To the extent plaintiffs take the position that there  
9 is nothing to prevent them from filing a motion, I am putting  
10 you on notice that I intend to use my inherent power to suspend  
11 briefing pending further order of the Court because there are  
12 important undertakings, there are important indications of  
13 improvement, and there are important steps that are entrain for  
14 the next few weeks and months, and so we will be in a better  
15 position to determine the necessity and targeting of such a  
16 further step if necessary.

17 So at this time the city and the department have  
18 proffered an action plan to reform the management and oversight  
19 of the facilities at Rikers Island and have taken meaningful  
20 steps to implement the changes that are specified in the action  
21 plan to improve the safety and conditions of the people  
22 detained in the Rikers facilities.

23 The monitoring team has reported, and it's been  
24 represented here in court today, that the commissioner has  
25 appointed 28 department leaders, including many with experience



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1 and expertise managing correctional systems in other  
2 jurisdictions, bringing in fresh perspectives and additional  
3 expertise. The monitoring team has concluded that these  
4 leaders have developed what the monitoring team characterizes  
5 as well-informed plans that will fundamentally alter the way  
6 the department operates, and that the department has taken  
7 affirmative steps to effect change. Specific steps are  
8 detailed in the October 28, 2022, status report, including  
9 changes going to foundational issues at the department such as  
10 security, staffing, and classification of individuals in  
11 custody. And as the October 28 report explains, the  
12 department's enhanced engagement with the monitoring team over  
13 these past five months, the infusion of capable leadership with  
14 outside expertise, and implementation of concrete reforms  
15 provides a basis for expecting that with sustained commitment  
16 and action at the current pace, and one hopes an even faster  
17 pace, the department can begin to build a foundation on which  
18 meaningful reform can be achieved in order to improve the  
19 conditions of those who are held at Rikers.

20 Because the department and the city leadership  
21 currently in place have so far demonstrated and acted on their  
22 commitment to a sustained pace of reform and have begun to  
23 effect meaningful change, the Court concludes that granting  
24 plaintiffs the opportunity to pursue a receivership application  
25 now would be premature and would be inconsistent with the legal

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1 constraints imposed by the PLRA.

2 The Court remains deeply concerned about the safety  
3 and well-being of every person held at Rikers Island, and the  
4 Court is committed to seeing effective reform that improves the  
5 safety and overall conditions for those in custody at Rikers  
6 and the other city jails. By virtue of the use-of-force focus  
7 of this litigation and consent decree, the Court's attention  
8 does center on ensuring that the city and the department  
9 implement the structural changes that are necessary for the  
10 defendants to be able to achieve compliance with the  
11 requirements of the consent decree and the remedial orders.

12 Ensuring meaningful and effective reform at the  
13 quickest pace possible means this Court has to make difficult  
14 decisions about the allocation of resources. The Court has  
15 concluded that at this time diverting resources to a dispute  
16 about a receivership, which would involve a potential shift of  
17 leadership of at least some functions and authority from the  
18 city and the department to an outside person who, in the first  
19 instance at least, will face the same laws, regulations,  
20 contracts, and other issues as the defendants find create  
21 hindrances now, seems to the Court to be counterproductive.  
22 And it is the Court's belief and intent that all of the  
23 defendants' resources and focus need to be appropriately  
24 directed at delivering safety and improved overall conditions  
25 to the people who are held at Rikers.

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1           The Court recognizes that there have been stops,  
2 starts, and backward progression over the past six years.  
3 However, there are concrete steps being taken now, there are  
4 concrete structural changes, and there are indications of  
5 progress that the Court does not find appropriate to impede or  
6 further complicate at this time.

7           With the aid of meaningful and detailed continued  
8 reporting from the monitor, including special reporting as may  
9 be necessary, the Court will hold the defendants accountable  
10 for maintaining a sustained pace of reform. Should their  
11 efforts or defendants' ability to translate their commitments  
12 into meaningful change wane, the Court will be in a more  
13 appropriate position to entertain a receivership application,  
14 and at the conference following the next monitor report, the  
15 Court will again hear the parties as to whether further  
16 commencement of motion practice or other further intervention  
17 is necessary.

18           So the application to commence motion practice and a  
19 full briefing schedule is denied at this point without  
20 prejudice to renewal after the next report.

21           I now turn to the monitoring team's request to modify  
22 the reporting schedule. The Court has carefully considered the  
23 request, and the Court grants the request to modify the  
24 monitoring team's reporting schedule as set forth in Section G,  
25 paragraphs 2(iii) and (iv) and paragraph 5(ii)(2) of the

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1 consent decree.

2 The Court grants this request in order to ensure the  
3 most effective and efficient allocation of the monitoring  
4 team's resources and to ensure that the reporting schedule  
5 provides adequate opportunity to measure the defendants'  
6 progress in implementing meaningful reform pursuant to the  
7 action plan.

8 So under the new schedule, the next reports will be  
9 filed March 31, 2023, and June 9, 2023. And the city and the  
10 department must also produce what will be a confidential  
11 one-time supplement to their regular compliance report that  
12 will be produced in early February 2023 pursuant to Section XIX  
13 of the consent judgment with the data required by the action  
14 plan that will not be filed publicly. It will be subject to  
15 confidentiality pursuant to the agreements that are outlined in  
16 docket entries 290 and 340 for substantially the reasons that  
17 are set forth in footnote 3 of docket entry No. 475, which is  
18 the monitor's November 14, 2022, letter.

19 I am now setting a conference to follow the filing of  
20 the March 31 report. That conference will be -- and, Ms. Ng,  
21 please make sure that this is still available -- April 27 at  
22 2:00 in the afternoon. That is a date and time that I had  
23 identified, but I'm not sure I discussed it with Ms. Ng.

24 THE DEPUTY CLERK: Yes, it's available.

25 THE COURT: All right. So the next scheduled

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1 conference is April 27, 2023, at 2:00. I am denying the  
2 request to set now a February conference, but if, after the  
3 disclosure of the additional data, any party believes that a  
4 conference earlier than the April conference would be necessary  
5 or productive, the parties are instructed to meet and confer  
6 and can request that the Court set a conference.

7 I am anticipating and looking forward to the receipt  
8 of a more fleshed out version of the proposed stipulation that  
9 would authorize the commissioner to hire outside the uniformed  
10 ranks for facilities supervisors, currently known as wardens of  
11 the facilities, together with supporting affidavits from the  
12 monitor and -- or declarations from the monitor and from the  
13 city. And given the rationale that Ms. Joyce offered for the  
14 need for further time for preparation of the declaration that  
15 will detail the steps that have been attempted to either waive  
16 or otherwise eliminate the impediments posed by the laws  
17 specified in the draft of the stipulation, the due date for the  
18 declarations and, in other words, a complete submission of the  
19 proposal is November 30 of 2023.

20 I believe that that addresses all of the issues that  
21 were put before me today.

22 Ms. Greenberger.

23 MS. GREENBERGER: Thank you so much, your Honor. I  
24 just had one question about the Court's order on our requested  
25 motion.

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1 I understand or hear the Court on the receivership  
2 request, but separate from the receivership request we had  
3 asked to move for contempt because there's a lot of evidence  
4 that at the moment the city is not in compliance with the  
5 consent judgment and remedial orders. Just as one example, we  
6 put in our letter that there's no -- there's intake overstay  
7 and data collection issues about the rule that people are  
8 supposed to leave intake in 24 hours. And so we're -- we would  
9 like to have the opportunity to seek contempt, to seek a remedy  
10 for the -- we can talk about what is the appropriate remedy for  
11 their contempt, but at least to make a motion and a record that  
12 they are in contempt with the consent judgment and remedial  
13 orders.

14 THE COURT: Well, I had heard your references to  
15 contempt and receivership as being related and also as being  
16 more holistic in terms of the proposition that since 2015  
17 compliance hasn't been achieved with the consent decree writ  
18 large. I don't believe I missed this in the submissions, but I  
19 might have. I certainly did not hear today a particularized  
20 application with respect to the overstay in intake, and I'm  
21 not aware of specific consultation regarding a potential  
22 contempt application on that issue. And in general, although  
23 it's not necessarily required in every case -- I suppose that  
24 inattention can sometimes support a contempt application -- but  
25 generally bad faith is necessary there, and I have not heard a

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1 description of a record that would lead me to believe that as a  
2 contempt application that would be likely, on the record that  
3 has been described to me now, to be one that would be  
4 successful.

5 Having said that, it is a very, very important issue,  
6 and so I would urge you, if you haven't done already, to have  
7 very specific discussions with the city and the commissioner.

8 MS. GREENBERGER: No, we have, and their -- our  
9 meeting and conferring has been basically them telling us if  
10 you have an issue with it, go to the Court. We're not giving  
11 you any information. We've been trying to get information  
12 since this summer about this. We fully met and conferred.

13 We saw that as subsumed within the broader contempt  
14 motion, and that's why it wasn't a separate motion that we were  
15 envisioning raising before your Honor, but it is certainly  
16 something that we fully met and conferred with the city on, and  
17 we are very concerned about.

18 And to your Honor's question about bad faith, there's  
19 evidence that records were intentionally changed to make it  
20 look like people were leaving within 24 hours and they weren't,  
21 and nobody was ever disciplined for that, and it's not clear  
22 that that ever changed. So I do believe that meets the bad  
23 faith test.

24 THE COURT: Ms. Joyce, would you like to be heard?

25 MS. JOYCE: Very briefly, your Honor. We have not

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1 refused to provide information to the plaintiffs since the  
2 summer. They have raised this issue with us, which was a  
3 self-identified issue that the department is working to  
4 rectify, that the commissioner has taken steps in intake with  
5 his team. So there's not -- and I could go into some of that  
6 now that has been shared with the parties. We had multiple  
7 meet and confers over the past few weeks, I think for probably  
8 three to five hours.

9 So there are steps being taken by the department to  
10 address the intake overstay, and we have not refused to give  
11 information to the parties. There's no evidence of bad faith  
12 here.

13 So I don't know if, commissioner, if you want to talk  
14 about anything related to intake, but it's an issue that has  
15 been identified by both the department and the parties, and  
16 it's being diligently worked on by the executive leadership  
17 team to ensure that the information obtained in intake is  
18 accurate and that people are not overstaying longer than 24  
19 hours.

20 MR. MOLINA: Your Honor, just to add to that, as it  
21 relates to intake, we are seeking and we have been working with  
22 our informational technology department in order to make  
23 revisions to the dashboard application so that we make sure not  
24 only we can assure proper access to that dashboard by staff,  
25 but understanding what are the different additional key pieces



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1 of information that are needed in that dashboard to document a  
2 person's progression through the intake process and moments  
3 where maybe that clock may need to stop because there are  
4 things out of our control, for example, the person being  
5 brought back to court, and it may appear that person is there  
6 over 24 hours when, actually, they are not.

7 In addition to that, we did hire a deputy  
8 commissioner, as you know, of administration who is our  
9 staffing manager. He is working along with our industrial  
10 engineers for workforce optimization to assure that we have the  
11 right level of staffing and that the staff is trained  
12 appropriately in how to use this dashboard that was placed  
13 during the prior administration, to make sure that individuals  
14 are processing through as quickly as possible through their  
15 intake process and placed in their housing units.

16 So we're aligning staff with the task expected of  
17 managing the intake and ensuring that that staff that's  
18 assigned there is consistent so that we don't have individuals  
19 that have never worked intake before working in intake.

20 THE COURT: So what is your time frame for having good  
21 data and proper staffing in intake?

22 MR. MOLINA: So our information technology unit is  
23 working with that dashboard now. That is work that is ongoing.  
24 I don't have a time frame right now.

25 THE COURT: Are you telling me you're hopeful that

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1 you'll know where people are by August?

2 MR. MOLINA: Oh, no, no, no, sooner than that. I  
3 would say another 30, 45 days, unless there's some technology  
4 issue that needs to be addressed. But we are identifying and  
5 working with Correctional Health Services to identify what are  
6 the appropriate times. For example, if someone has to go to a  
7 hospital, what type of medical care should stop that clock and  
8 what should not. So that's what we're working through.

9 We've also have moved the system out of intake and put  
10 it in a general office so that there's only specific staff  
11 that's available that can input into the dashboard to make  
12 these identifications of where the person is in the process.

13 THE COURT: Has this level of detail of information  
14 been provided to plaintiffs before?

15 MS. GREENBERGER: No.

16 MS. WERLWAS: No, your Honor. In response and -- when  
17 we raised this issue with the city on August 26 with our  
18 noncompliance notice under the consent judgment, we provided  
19 much more information, much more detail than was before the  
20 Court today, because that was given the breadth of today's  
21 discussion.

22 The only response that we have gotten in our meet and  
23 confers, which were delayed, in asking the city's position or  
24 their response to the much more voluminous evidence of intake  
25 overstays and tampering with the data was that they were moving

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1 towards -- or planning to move towards substantial compliance.  
2 We have not gotten answers nor reliable information on what  
3 happened to this data and why it was altered.

4 And secondly, there appears -- we have not gotten  
5 answers to their views on what the Court's order means when the  
6 Court said people would be processed through intake in 24  
7 hours, and we are hearing about stopping clocks, which is not  
8 part of the orders, and the city's view on what it can "stop  
9 the clock for" that are not part of the Court orders. We have  
10 not gotten those responses from the city. We have been trying  
11 to meet and confer with them since we sent the notice on  
12 August 26 to get this information.

13 We did choose -- quite frankly, if we were not here  
14 today on much broader issues, what one might say anticipating  
15 and seeking the briefing schedule on contempt and receivership  
16 that would be on many issues under the consent judgment, this  
17 being one of them, we have a meritorious contempt motion that  
18 we could make on this issue alone. And we raised this question  
19 about contempt so that we can have clarity under your Honor's  
20 orders about what remedies we can pursue seeking contempt. I'm  
21 sorry, when I say "remedies," I mean how we can pursue motions  
22 for contempt on an issue such as this which has already been  
23 teed up and for which we have not gotten answers.

24 THE COURT: Ms. Joyce.

25 MS. JOYCE: Your Honor, we are happy and the city are

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1 happy to have another meet and confer with plaintiffs on this  
2 particular topic. The meet and confers that we've been having  
3 recently, there have been many topics to discuss, so perhaps we  
4 didn't get into the details of this particular topic. But we'd  
5 be happy to have another meeting with Legal Aid to demonstrate  
6 to them why a motion for contempt would not be successful  
7 before your Honor because there is no basis and no record of  
8 bad faith.

9 THE COURT: That meet and confer must take place by  
10 December 2, and you must come armed to that meet and confer  
11 with information even more specific than the information that  
12 was proffered today as to steps that are being taken as to the  
13 city and the department's knowledge of and ability to determine  
14 right now whether people have been in intake for more than 24  
15 hours and the expected timetable for getting a handle on that  
16 information.

17 Should plaintiffs still believe that contempt motion  
18 practice is necessary following that meet and confer, the meet  
19 and confer should include the discussion of a timetable for  
20 briefing if there is still an assessment that there is a need  
21 to go forward with contempt motion. And so in the week of  
22 December 5, I think it would be, at that point provide me with  
23 a joint status letter.

24 Thank you, and thank you for being more specific about  
25 that particular concern.

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1 All right. Is there anything else that we need to  
2 address together this afternoon?

3 Thank you all very much. Stay safe. Work hard to  
4 keep the people safe who are in Rikers. Stay well, everyone.

5 Mr. Tavira's family, I am so sorry for your loss, and  
6 we are working to make things better, and it is my intention  
7 that things will be better for other families.

8 All right. We are adjourned. Thank you.

9 (Adjourned)